

FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

The Committee has adopted the following new and amended or consolidated model civil jury instructions effective October 4, 2011.

ADOPTED

New and Amended Instructions

The Committee has adopted new and amended or consolidated jury instructions in response to the amendments to the Michigan Court Rules adopted by the Michigan Supreme Court that were effective September 1, 2011.

[AMENDED] M Civ JI 2.02 Description of Trial Procedure

M Civ JI 2.02 DESCRIPTION OF TRIAL PROCEDURE

Now I will briefly explain the general order of procedure in the trial from this point forward. First, the lawyer for the plaintiff makes an opening statement in which [he / she] outlines [his / her] theory of the case. The lawyer for the defendant can then make an opening statement, or [he / she] can wait until later. These opening statements are not evidence. They are only intended to assist you in understanding the viewpoints and claims of the parties.

After the opening statements, we will begin the taking of evidence. Plaintiff's lawyer will present evidence first. [He / She] may call witnesses to testify and may also offer exhibits such as documents or physical objects. Defendant's lawyer has a right to cross-examine the witnesses called by the plaintiff. Following the plaintiff's presentation, the defendant has the opportunity to present evidence. Plaintiff's lawyer has a right to cross-examine the witnesses called by the defendant. [During the taking of evidence the lawyers may be allowed to present interim commentary regarding evidence that has been submitted. This commentary is not evidence. Like the opening statements, it is only intended to assist you in understanding the viewpoints and claims of the parties.]

After all the evidence has been presented, the lawyers for each side will make their closing arguments to you in support of their cases. You are again reminded that the statements of the lawyers are not evidence but are only intended to help you in understanding the evidence and the way each side sees the case. You must base your decision only on the evidence.

In this case, the Plaintiff has brought [a claim / claims] involving [state nature of claims]. [Insert instructions regarding the elements of all civil claims (including definitions of legal terms), legal presumptions, and burdens of proof.]

Because no one can predict the course of a trial, these instructions may change at the end of the trial; if so, you should follow the instructions given at the conclusion of the trial. You will be given a written copy of the instructions I have just read for your use during the trial.

Note on Use

The words “plaintiff” and “defendant” may be replaced by “petitioner” and “respondent” in cases in which the latter terms are used to describe the parties.

Because the elements of civil claims may include legal terms, e.g. proximate cause, ordinary care, invitee, licensee, and allowable expenses, definitions of those legal terms should also be given.

The bracketed language should not be given if the court has determined before trial that interim commentary will not be permitted. If interim commentary is permitted, M Civ JI 3.16 should be given immediately before the commentary.

Comment

The 2011 amendments reflect the amendments to MCR 2.513(A) and (D) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. These amendments require the court to include in its preliminary instructions the elements of all civil claims, as well as legal presumptions and burdens of proof. Additionally, the court is given discretion to permit the parties to present interim commentary.

History

Amended January 1993, September 2007, October 2011.

[DELETED] M Civ JI 2.05 Jurors to Keep Open Minds

M Civ JI 2.05 JURORS TO KEEP OPEN MINDS

[INSTRUCTION DELETED]

Comment

This instruction was deleted by the Committee in October 2011. The instruction was deleted because its provisions were consolidated with M Civ JI 2.06 in response to the amendment of MCR 2.513. The new consolidated instruction has been designated M Civ JI 2.06.

History

Amended February 1991, January 1993, September 2007.
Deleted October 2011.

[DELETED] M Civ JI 2.06 Prohibited Actions by Jurors

M Civ JI 2.06 PROHIBITED ACTIONS BY JURORS

[INSTRUCTION DELETED]

Comment

This instruction was deleted and rewritten by the Committee in October 2011. The instruction was deleted because its provisions were consolidated with M Civ JI 2.05 in response to the amendment of MCR 2.513. The new consolidated instruction has been designated M Civ JI 2.06.

History

Amended January 1993, September 2007, September 2009.
Deleted October 2011.

[NEW] M Civ JI 2.06 Jurors to Keep Open Minds / Prohibited Actions by Jurors

M Civ JI 2.06 JURORS TO KEEP OPEN MINDS / PROHIBITED ACTIONS BY JURORS

(1) The law requires that cases be decided only on the evidence presented during the trial. So you must keep an open mind and not make a decision about anything in the case until after you have (a) heard all of the evidence, (b) heard the closing arguments of counsel, (c) received all of my instructions on the law and the verdict form, and (d) any alternate jurors have been excused. At that time, you will be sent to the jury room to decide the case. Sympathy must not influence your decision. Nor should your decision be influenced by prejudice regarding race, sex, religion, national origin, age, handicap, or any other factor irrelevant to the rights of the parties.

(2) **[Alternative A]** (Before you are sent to the jury room to decide the case, you may discuss the case among yourselves during recesses in the trial, but there are strict rules that must be followed.

First, you may only discuss the case when (a) all of you are together, (b) you are all in the jury room, and (c) no one else is present in the jury room. You must not discuss the case under any other circumstances. The reason you may not discuss the case with other jurors while some of you are not present is that all of you are entitled to participate in all of the discussions about the case.

Second, as I stated before, you must keep an open mind until I send you to the jury room to decide the case. Your discussions before then are only tentative.

Third, you do not have to discuss the case during the trial. But if you choose to do so,

you must follow the rules I have given you.)

[Alternative B] (Before you are sent to the jury room to decide the case, you are not to discuss the case even with the other members of the jury. This is to ensure that all of you are able to participate in all of the discussions about the case, and so that you do not begin to express opinions about the case until it has been submitted to you for deliberation.)

(3) There are some additional rules about who you may talk to about the case, and when. You are not to discuss the case at all with family, friends, or even strangers, until you have been discharged as a juror. You may not answer questions from members of your family or anyone else about what kind of case it is or what the case is about. This restriction also includes posts to social media sites such as Facebook and Twitter. The reason for this restriction is that in talking about the case to others and hearing what they may have to say, you may be influenced to form an opinion about the case. This would compromise the right of the defendant and the plaintiff to have a verdict rendered only by the jurors and based only on the evidence you hear and see in the courtroom.

While you are serving as a juror, don't allow anyone to say anything to you or say anything about this case in your presence. If anyone does, advise them that you are on the jury hearing the case, ask them to stop, and let me know immediately.

During the trial of this case and until I have discharged you, there are certain other persons you may not talk to at all. You may not talk to any plaintiff or defendant or their lawyers or any witness, even if your conversation has nothing to do with this case. This is necessary to avoid even the appearance of unfairness or improper conduct on your part.

After you are discharged as a juror, you may talk to anyone you wish about the case. Until that time, I ask you to control your natural desire to discuss the case outside of what I've said is permitted.

(4) Until I discharge you as jurors, you may not read, listen to, or watch any news reports about this case. Under the law, the evidence you consider to decide the case must meet certain standards. For example, witnesses must swear to tell the truth, and the lawyers must be able to cross-examine them. Because news reports do not have to meet these standards, they could give you incorrect or misleading information that might unfairly favor one side. So, to be fair to both sides, you must follow this instruction.

(5) While you are in the courtroom and while you are deliberating, you are prohibited altogether from using a computer, cellular telephone, or any other electronic device capable of making communications. You may use these devices during recesses, but even then you may not use them to obtain or disclose the kind of information I will describe next.

(6) Until you are discharged as jurors on this case, even when you are not in court, you

may not use a computer, cellular phone, any electronic device capable of making communications, or any other method, to get any information about this case. Information about this case means:

- (a) any information about a party, witness, attorney, or court officer;
- (b) any news accounts about this case;
- (c) any information on any topics raised in the case, or testimony offered by any witness; and
- (d) any other information that you might think would be helpful in deciding the case.

(7) You must not visit the scene of the occurrence that is the subject of this trial. If it should become necessary that you view or visit the scene, you will be taken as a group. You must not consider as evidence any personal knowledge you have of the scene.

(8) You must not do any investigations on your own or conduct any experiments of any kind. This includes using the Internet for any purpose regarding this case.

(9) If you discover that any juror has violated any of my instructions about prohibited conduct, you must report it to me.

Note on Use

The court will choose between Alternative A or B in paragraph 2 based on the court's decision whether to permit the jurors to discuss the evidence among themselves during trial recesses.

Comment

M Civ JI 2.05 and 2.06 were deleted in October 2011 and combined into this instruction. This action reflects the amendment to MCR 2.513(K) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. That amendment grants the court discretion to permit juror discussion of the evidence during trial recesses.

History

Adopted October 2011.

[AMENDED] M Civ JI 2.11 Questions by Jurors Allowed

M Civ JI 2.11 QUESTIONS BY JURORS ALLOWED

During the testimony of a witness, you might think of an important question that you believe will help you better understand the facts in this case. Please wait to ask the question until after the witness has finished testifying and both sides have finished their questioning. If your question is still unanswered, write the question down, raise your hand, and pass the question to the bailiff. The bailiff will give it to me. Do not ask the

witness the question yourself, show the question to the other jurors, or announce what the question is.

There are rules of evidence that a trial must follow. If your question is allowed under those rules, I will ask the witness your question. If your question is not allowed, I will either rephrase it or I will not ask it at all.

Note on Use

If questions from jurors are allowed, this instruction may be used. The questioning of, and the method of such questioning of, witnesses by jurors is within the discretion of the trial judge. The court does not have to allow such questioning, but must recognize that it has discretion to do so. *People v Heard*, 388 Mich 182 (1972).

MCR 2.513(I), as amended by the Michigan Supreme Court effective September 1, 2011, requires, among other things, the court to employ a procedure that ensures that the parties have an opportunity outside the hearing of the jury to object to the questions.

Comment

MCR 2.513(I).

History

M Civ JI 2.11 was added October 1993.

Amended October 1994, September 2007, October 2011.

[AMENDED] M Civ JI 2.13 Note Taking by Jurors Allowed/ Not Allowed

M Civ JI 2.13 NOTE TAKING BY JURORS ALLOWED/ NOT ALLOWED

(a) *(You may take notes during the trial if you wish, but of course you don't have to. If you do take notes, you should be careful that it does not distract you from paying attention to all the evidence. When you go to the jury room to decide your verdict, you may use your notes to help you remember what happened in the courtroom. If you take notes, do not let anyone see them. After you have begun your deliberations, it is then permissible to allow other jurors to see your notes. [You must turn your notes over to the bailiff during recesses.] The notes will be destroyed at the end of the trial.)

(b) *(I do not believe that it is helpful for you to take notes because you might not be able to give your full attention to the evidence. So please do not take any notes while you are in the courtroom.)

Note on Use

*The court may use paragraph (a) or paragraph (b), depending on whether the jurors are allowed to take notes.

If paragraph (a) is given, the bracketed sentence in that paragraph may be read if the court wants to assure that notes are not seen by anyone except the jurors.

Paragraph (b) should be given only when a juror requests to take notes and the court decides not to allow note taking.

Comment

The 2011 amendment reflects the amendment to MCR 2.513(H) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment requires the court to ensure that all juror notes are collected and destroyed at the conclusion of trial. The amended instruction informs the jurors of that fact.

History

M Civ JI 2.13 was added October 1993.

Amended December 1994, October 2011.

[NEW] M Civ JI 2.14 Reference Documents

M Civ JI 2.14 REFERENCE DOCUMENTS

You will now be given [a reference document / reference documents / a notebook] including [describe contents, including list of witnesses, relevant statutory provisions, documents]. [The parties have stipulated that the contents of the (document / documents / notebook) are admitted as exhibits.] [In the event (one / one or more of) the (document / documents / contents of the notebook) (is / are) not admitted, you must disregard (it / them) at the end of the trial.] You must turn your [reference document / reference documents / notebook] over to the bailiff during recesses. The [reference document / reference documents / notebook] will be destroyed at the end of the trial.

Note on Use

Jurors may be told that they can write in their notebook. Because jurors may have written in their notebook, any additions to the notebook made during trial should be made by court personnel or the jurors in order to prevent the parties from observing any writings made by the jurors.

Comment

The 2011 adoption of this instruction reflects the amendment to MCR 2.513(E) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment gives the court the discretion to authorize or require counsel to provide the jurors with a reference document or notebook. Informing the jurors that the reference document/notebook will be destroyed is consistent with MCR 2.513(H), which provides that the court is to ensure that all juror notes are collected and destroyed at the conclusion of trial.

History

M Civ JI 2.14 was added October 2011.

[AMENDED] M Civ JI 3.04 Attorneys' Statements Not Evidence; Admission by Attorney

M Civ JI 3.04 ATTORNEYS' STATEMENTS NOT EVIDENCE; ADMISSION BY ATTORNEY

The lawyers' statements and arguments are not evidence. They are only meant to help you understand the evidence and each side's legal theories. The lawyers' questions to witnesses are also not evidence. You should consider these questions only as they give meaning to the witnesses' answers. You should only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge. [Likewise, your or my questions for the witnesses are also not evidence.]

However, an admission of a fact by a lawyer is binding on [his / her] client.

Note on Use

If a fact is admitted by a lawyer, this shall be explained to the jury as binding on his or her client to the extent of the admission, regardless of evidence to the contrary.

If a specific admission, such as negligence or contributory negligence, is made, then the Court should explain that particular admission to the jury when giving the instructions on that subject.

The bracketed language should be used if the judge or juror question was posed.

Comment

Occasionally lawyers argue on matters that are within their personal knowledge but are not of record, or in the heat of forensic attack will make statements not based on the evidence. Ordinarily this is objected to and a request is made to instruct the jury to disregard the statement, but it is impossible or impractical to object to every such statement. It is therefore proper to inform the jury that arguments and statements of counsel not based on the evidence should be disregarded. *Dalm v Bryant Paper Co* , 157 Mich 550 (1909).

For admissions on the pleadings, see MCR 2.111(E); for admissions by a lawyer in the course of trial, see *Ortega v Lenderink* , 382 Mich 218 (1969).

History

M Civ JI 3.04 was SJI 1.01(5).

Amended September 2007, October 2011.

[AMENDED] M Civ JI 3.08 Judge's Opinion as to Facts Is to Be Disregarded

M Civ JI 3.08 JUDGE'S OPINION AS TO FACTS IS TO BE DISREGARDED

My comments, rulings, questions, [summary of the evidence,] and instructions are also not evidence. It is my duty to see that the trial is conducted according to the law, and to tell you the law that applies to this case. However, when I make a comment or give an instruction, I am not trying to influence your vote or express a personal opinion about the case. If you believe that I have an opinion about how you should decide this case, you must pay no attention to that opinion. You are the only judges of the facts, and you should decide this case from the evidence.

Comment

The instruction is so worded to inform the jury that comments the judge might make on the evidence are not binding on them. *Cook v Vineyard*, 291 Mich 375; 289 NW 181 (1939).

Since the remarks and rulings of the trial judge may erroneously be interpreted by the jury as comments on the evidence, this instruction is proper. *Mawich v Elsey*, 47 Mich 10; 10 NW 57 (1881).

The 2011 amendment reflects the amendment to MCR 2.513(M) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment permits the court to sum up the evidence under certain conditions. Any summary of the evidence by the court should be immediately preceded by M Civ JI 3.17.

History

Amended October 2011.

[NEW] M Civ JI 3.16 Interim Commentary by Attorneys

M Civ JI 3.16 INTERIM COMMENTARY BY ATTORNEYS

At this juncture in the trial, the court finds it appropriate to allow each party to provide interim commentary. The lawyers' commentaries are not evidence. They are only meant to help you understand the evidence and each side's legal theories. You should only accept things that the lawyers say that are supported by the evidence or by your own common sense and general knowledge. All of my earlier instructions regarding basing your decision on the evidence and law continue to apply.

Note on Use

The court may place reasonable time limits on the interim commentary.

Comment

The 2011 adoption of this instruction reflects the amendment to MCR 2.513(D) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment gives the court discretion to permit the parties to present interim commentary.

History

M Civ JI 3.16 was added October 2011.

[NEW] M Civ JI 3.17 Summary of Evidence by Judge

M Civ JI 3.17 SUMMARY OF EVIDENCE BY JUDGE

I will now summarize the evidence for you. It is intended only as a summary and you should consider all of the evidence when deciding this case, even if I do not mention all of the evidence in this summary. Remember that it is your job to decide what the facts of this case are. This is your job and nobody else's. It is for you to determine the weight of the evidence and the credit to be given to the witnesses, and you are free to decide that something I have not mentioned, but which has been admitted into evidence, is significant to your decision. You are not bound by my summary of the evidence. [Summary is then given.]

Again, it is for you to determine for yourself the weight of the evidence and the credit to be given to the witnesses. You are not bound by my summation.

Comment

The 2011 adoption of this instruction reflects the amendment to MCR 2.513(M) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment permits the court to sum up the evidence under certain conditions.

History

M Civ JI 3.17 was added October 2011.

[AMENDED] M Civ JI 4.11 Consideration of Deposition Evidence

M Civ JI 4.11 CONSIDERATION OF DEPOSITION EVIDENCE

[Ladies and gentlemen, you are now going to hear a summary of a deposition that was taken. A deposition is the sworn testimony of a party or witness taken before trial. All parties and their lawyers had the right to be present and to ask questions. The summary was prepared to more efficiently present this evidence. You are also being given a copy of the summary so you can follow along as it is being read. You are to

give this evidence the same consideration as you would have given it had the witness testified in open court.]

During the trial, [you heard testimony from a deposition / you were read the summary of a deposition]. A deposition is the sworn testimony of a party or witness taken before trial. All parties and their lawyers had the right to be present and to ask questions. [The summary was prepared to more efficiently present this evidence.]

You are to give this evidence the same consideration as you would have given it had the [witness / witnesses] testified in open court.

Note on Use

The bracketed language in the first paragraph should be given if a deposition summary is read to the jury as contemplated by MCR 2.513(F).

Comment

The Court may wish to give this instruction at the time a deposition is read or shown to the jury, see MCR 2.512(B)(1), and to explain why the deposition is admissible, see MCR 2.308(A).

Instructions that deposition evidence should be given the same fair consideration as testimony produced in open court have been approved. *Coburn v Moline, EM & W R Co*, 243 Ill 448; 90 NE 741 (1909); *Pyle v McNealy*, 227 Mo App 1035; 62 SW2d 921 (1933); see also 3 Callaghan's Michigan Pleading & Practice (2d ed) § 35.104.

The 2011 amendment reflects the amendment to MCR 2.513(F) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment calls for the court to encourage the use of written deposition summaries in lieu of full depositions.

History

M Civ JI 4.11 was SJ1 2.11.

Amended January 1988, September 2007, October 2011.

[AMENDED] M Civ JI 60.01 Jury Deliberations

M Civ JI 60.01 JURY DELIBERATIONS

You will be given a written copy of the final jury instructions for your use in the jury room for deliberation. [I will also provide you with an electronically recorded copy of these instructions.]

When you go to the jury room, your deliberations should be conducted in a businesslike manner. You should first select a foreperson. She or he should see to it that the

discussion goes forward in an orderly fashion and that each juror has full opportunity to discuss the issues.

When at least five of you agree upon a verdict, it will be received as your verdict. In your deliberations, you should weigh the evidence with an open mind and consideration for each other's opinions.

If differences of opinion arise, you should discuss them in a spirit of fairness and frankness. You should express not only your opinion but also the facts and reasons upon which you base it.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if you are convinced that it is wrong. However, none of you should surrender your honest conviction as to the weight and effect of the evidence or lack of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

During your deliberations, and before you reach a verdict, you must not disclose anything about your discussions to others outside the jury room, not even how your voting stands. Therefore, until you reach a verdict, do not disclose that information, even in the courtroom.

During your deliberations you may not communicate with persons outside the jury room (other than the Judge), or seek information by any means, including cellular telephones or other electronic devices.

If you discover a juror has violated my instructions, you should report it to me.

That concludes my instructions on the law. If you have any questions about these instructions at this point, please write them down and give them to the bailiff. The bailiff will then give them to me, and after consulting with counsel, I will address your questions.

[There being no further questions / No questions having been asked], it is now time for you to go into the jury room and begin your deliberations.

If you wish to communicate with me or examine the exhibits while you are deliberating, please have your foreperson write a note and give it to the bailiff. If you have any questions about my instructions on the law, please place those particular questions in a sealed envelope. Any questions or communications with me must be given to the bailiff, who will then pass them to me, and I will address the questions or communications with counsel and respond as appropriate.

Note on Use

If, after reasonable deliberation, the jury reports an inability to agree or fails to return a verdict, then the Court may also give M Civ JI 60.02. The court may give the jurors copies of the instructions before the instructions are read to the jury.

Comment

MCL 600.1352 and MCR 2.514(A) now provide for trial by a jury of six in civil cases, with a verdict to be received when five jurors agree. An exception is made for civil actions for commitment of a person to a mental, correctional or training institution, which require a unanimous verdict. MCR 5.740(C); MCL 600.1352.

The 2011 amendment reflects the amendment to MCR 2.513(N) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment requires that certain procedures be followed with respect to questions raised by the jurors and that the jurors be given a written copy of the instructions.

History

M Civ JI 60.01 was SJI 1.05.

Amended January 1982, April 1986, October 1993, March 2006, October 2011.

[AMENDED] M Civ JI 60.02 Deadlocked Jury

M Civ JI 60.02 DEADLOCKED JURY

The Court has previously instructed you that it is your duty to determine the facts from evidence received in open court and to apply the law to the facts and in this way decide the case. I am now asking you to return to the jury room for further deliberations. In your deliberations you should reexamine the questions submitted with a proper regard and consideration for each other's opinions. You should listen to each other's arguments with open minds and make every reasonable effort to reach a verdict.

[Because it appears you are (at an impasse / in need of assistance), I invite you to list the issues that (divide / confuse) you so that I can see if I can be of some assistance by clarifying or amplifying the final instructions.]

Note on Use

This instruction should be used only if the jury has reported a deadlock or the Court has determined that further deliberations are warranted, after considering such factors as the length of time the jury has been out, the hour of the day, the nature and complexity of the issues, the expense of retrial and the possibility of agreement. The following procedure is suggested:

1. If a message is received that the jury is deadlocked, or if the Court proposes to ascertain whether the jury is deadlocked, all counsel should be notified and given a reasonable opportunity to be present. At that time, the Court should state on

the record the facts concerning any communication from the jury, or, if there has been no communication, the length of time the jury has been deliberating. Counsel should be informed that the Court proposes to give the instruction and give them an opportunity to object.

2. The jury should then be returned to the box and cautioned not to reveal the numerical division in the voting. The Court may then make inquiry of the foreperson regarding the jury's ability to reach a verdict and, if further deliberations appear warranted, may give the instruction and return the jury to the jury room.

The bracketed language should be used as permitted by MCR 2.513(N)(4).

Comment

See MCR 2.513(N)(1) for authority to give additional instructions. Instructions which importune the jurors to reconcile their differences and reach a verdict have been approved in Michigan. *Kelley v Emery*, 75 Mich 147; 42 NW 795 (1889); *Vinton v Plainfield Twp*, 208 Mich 179; 175 NW 403 (1919); *Pierce v Rehfuess*, 35 Mich 53 (1876); *Richardson v Detroit & M R Co*, 182 Mich 206; 148 NW 397 (1914).

However, any instruction which tends to censure jurors for not yielding to the majority is erroneous. *Stoudt v Shepard*, 73 Mich 588; 41 NW 696 (1889). Any instructions which tend to be coercive, even though unintentionally so, may be reversible error. *Yinger v Secord*, 369 Mich 364; 119 NW2d 577 (1963). The same is true of such conduct as repeatedly sending the jury back for further deliberations late at night after already lengthy deliberations produced a deadlock. *Id.*

Instructions of this type have been approved by the federal courts in both civil and criminal cases. See, e.g., *Allen v United States*, 164 US 492 (1896); *Hoagland v Chestnut Farms Dairy, Inc*, 72 F2d 729 (CA DC, 1934).

The question of the propriety of inquiring as to the numerical division of the jury in civil cases has not been directly passed upon in Michigan. In *Yinger* such an inquiry by the trial judge was noted in the opinion, but not discussed. However, both federal and Michigan criminal cases have held that inquiry into the numerical division of the jury is coercive. *Brasfield v United States*, 272 US 448; 47 S Ct 135; 71 L Ed 345 (1926); *People v Wilson*, 390 Mich 689; 213 NW2d 193 (1973).

See generally Comment: *On Instructing Deadlocked Juries*, 78 Yale LJ 100 (1968).

The 2011 amendment reflects the amendment to MCR 2.513(N) ordered by the Michigan Supreme Court on June 29, 2011, which became effective September 1, 2011. This amendment permits the court in certain situations to invite the jurors to list the issues that divide or confuse them in the event the court can be of assistance in clarifying or amplifying the final instructions.

History

M Civ JI 60.02 was SJI 1.06.

Amended October 2011.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Alfred M. Butzbaugh

Reporter: Timothy J. Raubinger

Members: Hon. Jane M. Beckering; Mark R. Bendure; Mark T. Boonstra; Patricia J. Boyle; W. Mack Faison; Gary P. Gordon; Elizabeth Phelps Hardy; Hon. John A. Hohman, Jr.; Helen K. Joyner; Daniel J. McCarthy; David S. Mittleman; Hon. James R. Redford; Hon. Douglas B. Shapiro; Noreen L. Slank; Joseph C. Smith; Paul C. Smith; Hon. Brian R. Sullivan; Hon. Donald A. Teeple; Thomas Van Dusen; Hon. Michael D. Warren, Jr.